

(2018) 01 DEL CK 0388

In the Delhi High Court

Case No : Civil Writ Petition No. 2700 Of 2016

Kamal Kumar Jain & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

Constitution Of India, 1950 — Article 226
Right To Fair Compensation And Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 24(2)
Land Acquisition Act, 1894 — Section 4, 6, 11, 18, 31, 31(1), 31(2), 32, 33, 34

Citation : (2018) 01 DEL CK 0388

Hon'ble Judges : G.S.Sistani, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Irshad Ahmed, Namisha Gupta, Sarfaraz Ahmad, Dhanesh Relan, Akshita Manocha, Kajri Gupta, Ruchika Rathi

Final Decision : Disposed Of

Judgement

G. S. Sistani, J

1. With the consent of the parties, the present writ petition is set down for final hearing and disposal.

2. This is a petition under Article 226 of the Constitution of India seeking a declaration that the acquisition proceedings are liable to lapse with respect to the land of the petitioner measuring 3 Bigha 16 Biswas approximately 3800 Sq. Yards out of Khasra No. 36/17 Min. (1-16) and 36/34 Min. (2-00) situated in the revenue estate of Village Ranekhera, Delhi now known as Bhagya Vihar Jain Colony, New Delhi (hereinafter referred to as 'Subject Land') in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '2013 Act'), as neither the physical possession of the subject land has been taken nor the compensation has been paid.

3. In this case, a notification under Section 4 of the Land Acquisition Act, 1894 was issued on 21.03.2003 followed by a declaration under Section 6 of the said Act on 18.03.2004 and an award in respect of the subject land was rendered on 12.07.2005.

4. It is the case of the petitioners that area in question is built up and they are residing at the subject land.

5. Learned counsel for the petitioner submits that since neither the possession has been taken nor the compensation has been paid, the case of the petitioner is fully covered by the decision rendered by the Apex Court in *Pune Municipal Corporation & Anr. V. Harak Chand Misiri Mal Solanki & Ors.* reported in (2014) 3 SCC 183.

6. We have heard counsel for parties.

7. Counter affidavit has been filed by the DDA as also by the Land Acquisition Collector. Para 9 of the counter affidavit filed by the Land Acquisition Collector reads as under:

"9. That the Land was acquired vide Aard No. 08/2005-2006 dated 12.07.2005 wherein the physical possession of the Khasra Nos. 36//17 (4-16) and 36//24 (4-16) could not be taken by the Government nor the compensation had been released to any of the owners in the above mentioned Khasra Nos."

8. Having regard to the fact that neither actual physical possession of the subject land was taken nor the compensation has been paid to the petitioners, we are of the view that the present case would be covered by the decision rendered by the Supreme Court of India in the case of *Pune Municipal Corporation & Anr.* (supra). Paras 14 to 20 read as under:

"14. Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are: (i) the persons interested entitled to compensation do not consent to receive it (ii) there is no person competent to alienate the land and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made.

15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any

contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court to which reference can be made under Section 18.

16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this sub-section (sub-section (2) of Section 24). If a literal construction were to be given, then it would amount to ignoring procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

18. 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad[1]) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did

not receive the compensation, the amount (Rs.27 crores) was deposited in the government treasury. Can it be said that deposit of the amount of compensation in the government treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in Agnelo Santimano Fernandes[2], relying upon the earlier decision in Prem Nath Kapur[3], has held that the deposit of the amount of the compensation in the state's revenue account is of no avail and the liability of the state to pay interest subsists till the amount has not been deposited in court.

20. From the above, it is clear that the award pertaining to the subject land has been made by the Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the landowners/persons interested nor deposited in the court. The deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested. We have, therefore, no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the 2013 Act."

9. We are of the considered view that the necessary ingredients for the application of Section 24(2) of the New Act as has been interpreted by the Supreme Court of India and this Court in the following cases stand satisfied:

- (1) Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Ors., reported at (2014) 3 SCC 183;
- (2) Union of India and Ors v. Shiv Raj and Ors., reported at (2014) 6 SCC 564;
- (3) Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors, Civil Appeal no.8700/2013 decided on 10.09.2014;
- (4) Surender Singh v. Union of India & Others, W.P.(C).2294/2014 decided on 12.09.2014 by this Court; and
- (5) Girish Chhabra v. Lt. Governor of Delhi and Ors; W.P.(C).2759/2014 decided on 12.09.2014 by this Court.

10. Having regard to the submissions made by learned counsel for the parties more particularly para 9 of the counter affidavit filed by the Land Acquisition Collector wherein it has been stated that neither physical possession of the subject land has been taken nor the compensation has been paid to the owners and applying the law laid down to the facts of the present case, since the award having been announced more than five years prior to the commencement of the 2013 Act, the petitioners are entitled to a declaration that the acquisition proceedings initiated under the Land Acquisition Act, 1894 with regard to the subject land are deemed to have lapsed. It is ordered accordingly.

11. The writ petition stands disposed of in the above terms.